



Scott McCallum
Governor

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Continuing Education and USPAP

As recommended by the Appraiser Qualifications Board (AQB), the Department of Regulation and Licensing is implementing 7 hours of required continuing education in USPAP, which must be taught by an AQB certified instructor. Although the requirement goes into effect January 1, 2003, it will first affect Wisconsin licensed and certified Real Estate Appraisers during the biennial licensing period 2004-2005. To clarify, credential holders will be required to complete the new course before renewing their credential by December 31, 2005.

During the current renewal period, which ends on December 31, 2003, appraisers must still complete the 4 hours of USPAP training. You may elect to take the new 7 hour course when it becomes available. More information about course availability will be provided in future publications.

THE WISCONSIN REAL ESTATE APPRAISERS BOARD

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Practice Tips by Scott Williams, MAI, SRA

Bank examiners from FDIC and other federal agencies are closely auditing lenders' files on subdivision land deals. FDIC has filed several disciplinary complaints with DRL against appraisers. Don't let this happen to you.

One problem is the developer engaging the appraiser without full disclosure in the appraisal report. Remember that undisclosed readdressing of the report to a lender when the borrower is the client is an ethics violation of USPAP. It is also a FIRREA violation and, in extreme cases, might be considered fraud. Statement 10.B.2 and Advisory Opinion 10 (USPAP) explain an appraiser's obligations.

Did you know that the appraisal of a subdivision or many residential lots is considered to be a commercial appraisal? If you are not general certified, remember that your transaction value limit is \$250,000 for this type of property (see RL81.04). Since discounting of some type is normally required in order to arrive at Market Value, be sure you understand subdivision valuation techniques before accepting the assignment. Total expected gross retail sales of lots over the sell-out period is not the same as Market Value. Read the value definition in

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your report. It talks about a single purchaser ("buyer") and a sale "as of a specified date." The typical buyer for a group of lots is usually a developer, realtor, or professional investor, and they usually expect to buy at a discount to retail.

If an appraiser estimates total expected gross retail sales of lots over the sell-out period and calls it "Market Value", it is misleading and there are a number of USPAP violations. The feds are especially watching for this.

Another hot button mistake is to use only comparable sales within the subject subdivision or other subdivisions controlled by the borrower or its affiliates. Nationally, large losses have been sustained in fraud and flipping schemes where the borrower controlled the comps and fed them to the appraiser. Be sure you check outside the borrower's subdivisions for additional comps and include at least one or two in the report. Especially, be careful of high pressure operators who use sharp dealing to sustain an artificially high market within a development. The question is not how much they can sell it for but rather how much the buyer or average local broker can resell it for.

Bank examiners are putting subdivision land mortgage files under a microscope, especially when borrowers have a reputation for sharp dealing. If you did the appraisal, you and your appraisal will also be under the microscope. Be sure you know who you're dealing with and, as always, comply with USPAP. Remember, it's your license on the line.

Scott Williams is a Wausau appraiser who has done USPAP compliance review work for DRL discipline cases, and is a former chair of both the WI Real Estate Appraisers Board and the Appraiser Qualifications Board (AQB) in Washington, D.C.

Experience Claimed For Appraisals Performed Without Clients Will No Longer Be Accepted

Effective January 1, 2003, the Department will no longer accept experience claimed for appraisals performed without clients.

This policy is a change from previous practice. The March 2000 edition of the Regulatory Digest for the Real Estate Appraisers Board contained an article stating

that the Department of Regulation and Licensing would accept appraisals prepared in instances in which there are no actual clients. The article further indicated that in such cases, candidates may claim no more than one-third of the total experience hours required for licensure or certification, and that appraisal work claimed for appraisal experience must comply with the requirements set forth in s. RL 83.01, Code.

The Department's decision to accept appraisals prepared in instances in which there are no clients was based upon the Real Property Appraiser Qualification Criteria (Criteria) adopted by the Appraiser Qualifications Board (AQB). In a supplement to the Criteria, the AQB advised state regulatory agencies that an individual applying for a credential as an appraiser may submit appraisals prepared without having an actual client; provided the credentialing authority audit samples of appraisals prepared without clients and ascertain that they comply with USPAP. The supplement to the Criteria also stated that appraisals made without clients may fulfill up to one-third of the total experience requirement, depending on the quality of the experience.

Recently, in response to the proposed revisions to the AQB Criteria, the Wisconsin Real Estate Appraisers Board informed the AQB that it does not support the "no client" appraisal experience provision, and recommended that the provision be eliminated. In general, the Board questioned the validity and the quality of experience obtained under such circumstances. As noted by the AQB in its supplement to the Criteria, the appraiser determines the type of appraisal and the type of report that he or she will prepare. When appraisals are never presented to anyone with a stake in a potential transaction, there is no oversight entity to verify data and ensure that it is correctly analyzed and interpreted. Also, in such instances, there is no potential for feedback to the appraiser on his or her performance.

Based upon these concerns, and the Board's recommendation, the Department will not accept experience claimed for appraisals

performed without clients starting with applications filed on or after January 1, 2003.

Flipping: Dangerous Maneuvers for Appraisers

Written by and reprinted with the permission of Robert C. Wiley, President, Liability Insurance Administrators.

You may already be aware of one of the fastest-growing areas of appraiser litigation today: real estate “flipping” schemes. Armed with false paperwork and deceptive sales pitches, “flippers” are exploiting some of the country’s most fragile neighborhoods and gullible citizens. Posing as real estate investors, these flippers purchase rundown houses and resell them, sometimes within hours, to unsuspecting buyers at significantly higher prices. Typically, the flipper, with the aid of a mortgage broker, prepares a package of documents that includes a falsified loan application and other papers designed to legitimize the deal and make the buyer appear creditworthy. Such documents usually misrepresent the buyer’s down payment, employment, income, and assets.

Unfortunately, the transaction cannot take place without an appraisal. In order for the lender to make the loan, the appraisal must substantiate the higher purchase price. After the sale is complete, the buyer realizes he/she paid much more than the house is worth. Often the buyer is unable to fulfill the terms of the loan. In the event of a lawsuit, the appraiser may be named as a co-defendant for fraudulently inflating the value of the property.

Sometimes appraisers knowingly fail to disclose in the appraisal report that the property had been acquired by the flipper days, weeks, or months earlier – for a substantially lower price. In one case, the appraiser stated that he failed to disclose this information because he did not believe it to be relevant. Another appraiser did not disclose the lower purchase price because his client asked him not to. In other cases, the appraisers also fall victim to the scheme since comparable market sales have been created by a series of flipped transactions. Appraisers need to recognize a potential flip and take measures to protect themselves against litigation. The following scenario will

illustrate a typical flip and how you may avoid being drawn into this type of situation.

Ms. Byar was a single mom living in a subsidized housing project, making \$300 per week as a bus driver, and had poor credit. She heard through the grapevine about an “investor”, Mr. Flip, who could help her buy her own home for a \$500 down payment. She contacted Mr. Flip, who proceeded to show her several homes in the mid-city area. Eventually, Ms. Byar found a home she liked. Unbeknownst to Ms. Byar, Mr. Flip had purchased this home a few weeks earlier for \$10,000.

Initially, Ms. Byar was concerned about the condition of the home. It had old and stained carpeting, dirty walls, and missing or damaged fixtures and appliances. Mr. Flip immediately eased her concerns by telling her he intended to completely renovate the home with new carpeting, fixtures, appliances, and a complete paint job. Mr. Flip offered to sell the property to Ms. Byar for \$50,000, and with a down payment of \$500. Ms. Byar thought this was a great deal and agreed to purchase the home.

Mr. Flip proceeded to contact an out-of-town appraiser who valued the home at \$80,000 – after completion of the promised renovations. Mr. Flip convinced the appraiser that the home would be worth \$80,000 by showing the appraiser a list of comparable sales, all located within the same neighborhood and reflecting values of \$70,000 - \$90,000. The appraiser knew that Mr. Flip had purchased the property a short time earlier for \$10,000. However, Mr. Flip explained that he was an investor who bought packets of rundown homes, fixed them up, and resold them for a profit. Mr. Flip was concerned that the loan underwriter might be “misled” by the prior purchase price and would not approve the loan. The appraiser agreed to omit the lower purchase price from the report. Mr. Flip appeared to be an honest guy, and, since he was a big-time investor, the appraiser hoped to get more assignments from him in the future.

Additionally, Mr. Flip took Ms. Byar to his friend, a mortgage broker, to help her secure financing. The broker and Mr. Flip prepared a falsified loan package designed to mislead

the lender. The documents indicated the property was being sold for \$80,000, instead of the actual \$50,000 he promised Ms. Byar. The package sought a first trust deed of \$64,000 (80% of the purchase price). A false loan application was prepared which significantly over-stated Ms. Byar's income, assets, and the down payment. When the broker asked Ms. Byar to sign the documents, they were placed in a neat stack with arrows and clips indicating where she should sign. He told Ms. Byar the documents were in order and that she did not need to read all that legal jargon. Mr. Flip explained they would let her know as soon as her loan came through so she could make arrangements to move.

Shortly after moving in to her new home, Ms. Byar received a packet of loan documents. In all the confusion of unpacking, she did not actually read the paperwork, and filed it away to review later. Ms. Byar's first surprise came when she received her mortgage statement. The monthly payment was much higher than she expected and the statement indicated she had a mortgage of \$64,000! Unfortunately for Ms. Byar, the lender verified that the statement was correct. Ms. Byar immediately made several telephone calls to Mr. Flip and the mortgage broker. As you may expect, her calls were not returned. The next call Ms. Byar made was to a lawyer.

Mr. Flip initially paid \$10,000 for the property. His repairs were of poor quality and workmanship, and cost him around \$4,000. Mr. Flip also paid \$300 for the appraisal and a few thousand dollars in closing costs. As the seller, Mr. Flip received \$64,000 in loan proceeds and a \$500 down payment. Not a bad profit! Unfortunately for Ms. Byar, she was unable to make her mortgage payments and defaulted on her loan – damaging her already poor credit. The lender foreclosed on a property with a \$64,000 loan that has an actual value of less than \$20,000.

Despite the fact that Mr. Flip engaged in well over 100 similar transactions, he has filed a petition for bankruptcy, claiming his liabilities exceed his total assets. The misled appraiser is being sued for more than \$100,000. Consequently, there are many lessons to be

learned from the conduct of the real estate appraiser in this situation:

1. Be wary of information provided by the client - especially when the client says you do not need to verify it. The appraiser in this situation should never have relied upon the comparables provided to him by Mr. Flip. Aside from verifying that the figures were accurate, some additional investigation was warranted, in light of the lower purchase price. Had the appraiser done so, he/she would have noted the other sales of similar properties in that neighborhood were significantly lower values than those offered by Mr. Flip. In fact, the comparables provided by Mr. Flip were sales of other flipped properties.
2. Take care when accepting assignments outside your geographical area of expertise. If the appraiser had been familiar with the local market, he/she would have immediately recognized that the property value being sought was unusually high. Appraisers performing inspections outside their customary area should always take steps to become familiar with the local market. It is advisable to consult with local appraisers or realtors to ensure that accurate and complete information has been gathered.
3. Always analyze the listing and sales history of the subject property when it is available. Often second or third-time flips can be uncovered at this stage of the investigation. If the property has been bought and sold a number of times over the past year, or if the seller in the sales agreement is not the owner on record, then you may be dealing with a flipped property. A large discrepancy in the purchase and sales price of a property – held only a short time – is also a big clue.
4. Never intentionally omit prior sales history on the appraisal report. The appraiser made a huge mistake by excluding this information from the appraisal, even if it was at the client's request. By failing to disclose the prior sales history, the appraiser provided a report that was misleading. It is difficult to defend an appraiser in a lawsuit whose actions so clearly indicate culpability.

Legitimate investors are buying and selling real estate property every day at a profit. There is nothing illegal about that and

appraisers do flourish in a healthy real estate market. However, there are individuals out there who attempt to defraud buyers and lenders through a series of misrepresentations and falsified documents. Often the appraiser is unwittingly caught in the crossfire when the fraud is discovered. By conducting a thorough investigation (and using a good dose of common sense), you can help to avoid being Mr. Flip's next victim.

Number of Active Licensees as of Oct 2002:

Licensed Appraisers = 557

Certified Residential Appraisers = 874

Certified General Appraisers = 615

The City of Milwaukee Assessors Office Benefits From Adopting USPAP

In 2000, the City of Milwaukee Assessor's office adopted USPAP as part of its operating

procedures. Assessment Commissioner Mary Reavey incorporated USPAP because she feels that it is accepted world-wide as the standard in professional appraisal practice and because it is a requirement of the ethics rules of the International Association of Assessing Officers, of which she is a member. She feels that the establishment and endorsement of these standards has benefited her department during Board of Review cases and in conversations with sophisticated taxpayers.

Note: Compliance with USPAP (Standard 6) is a requirement when substituting assessor experience for appraisal experience on the Real Estate Appraiser Credential application.

USPAP Reminder

This is a reminder that Licensed and Certified Appraisers must comply with USPAP in all appraisals that they perform, not only appraisals performed for federally related transactions. Per RL 86.01 (2) *"All appraisals performed in conjunction with federally related transactions and non-federally related transactions shall conform to the uniform standards of professional appraisal practice set forth in Appendix I."* This includes, but is not limited to, appraisals for divorces, estates, assessment challenges, right-of-way acquisitions, etc.

Disciplinary Actions

The disciplinary summaries are taken from orders that can be reviewed on the Department of Regulation and Licensing Web site: www.drl.state.wi.us. Click on "Publications" and then "Reports of Decisions" to view the order. Decisions reported below may have an appeal pending and the discipline may be stayed. The current status of the discipline may be viewed on the Department's Web site under "License Lookup", or obtained from the Department: (608) 266-2112. For the progress of court cases, check www.courts.state.wi.us.

**HARRY M. DEVITT
WHITEWATER, WI**

VOLUNTARY SURRENDER

Conducted an appraisal that was found to have several errors which evidenced a lack of knowledge or ability to apply professional principles or skills. Dated 8-28-2002. Wis. Stat. 458.26(3)(b)-(c); Wis. Admin. Code RL 86.01(1)-(2), (5). Case #LS0208282APP

**HARRY N DEVITT
WHITEWATER, WI**

COSTS/EDUCATION

Claimed appraisal experience for work that was actually performed by others and performed an appraisal that did not meet practice standards. Costs \$1,000.00. Dated 8-28-2002. Wis. Stat.

458.26(3)(a)(c)(e); Wis. Admin. Code RL 86.01(1)-(2), (6). Case #LS0208283APP

**KEVIN P WALSH
CHICAGO, IL**

SUSPENDED/COSTS

Performed an appraisal that contained several errors which evidenced a lack of knowledge or ability to apply professional principles or skills. Dated 8-28-2002. Wis. Stat. 458.26(3)(b)-(c); Wis. Admin. Code RL 86.01(1)-(2), (5). Case #LS0208284APP

**DAVID H LEWIS
MILWAUKEE, WI**

COSTS/EDUCATION

Completed an appraisal report that contained numerous errors and omissions of data. Dated 10-30-2002. Wis. Stat. 458.26(3)(c); Wis. Admin. Code RL 86.01(1)-(2), (6). Case #LS0210302APP

**DARRIN J LEBRUN
WAUSAU, WI**

LIMITED/COSTS

Engaged in conduct showing a lack of knowledge or ability to apply professional principles or skills and advertised in a manner that was false, deceptive or misleading. Dated 8-28-2002. Wis. Stat. 458.26(3)(c), (e); RL 86.01(6). Case #LS0208281APP

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To discuss application questions:	press 1 - 3
To discuss temporary license questions:	press 1 - 3
To renew or reinstate a permanent license:	press 1 - 4
To renew or reinstate a permanent license:	press 2 - 1
To renew a temporary license:	press 2 - 2
To obtain proof of licensure to another state:	press 3 - 1
To find out if a person is licensed:	press 3 - 2
To file a complaint on a license holder:	press 8
To check the status of complaints:	press 8
For all other licensing questions:	press 1 - 3

VERIFICATIONS

Verifications are now available online at www.drl.state.wi.us. On the Department Web site, please click on "License Lookup". If you do not use the online system, all requests for verification of licenses/credentials must be submitted in writing. There is no charge for this service. Requests should be sent to the Department address or may be faxed to (608) 261-7083 - ATTENTION: VERIFICATIONS. Requests for endorsements to other states must be made in writing - please include \$10 payable to the Department.

DID YOU KNOW THAT YOU CAN ACCESS MOST INFORMATION ON THE DEPARTMENT OF REGULATION & LICENSING WEB SITE?

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www.drl.state.wi.us

Send comments to: web@drl.state.wi.us

CHANGE OF NAME OR ADDRESS?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes is not automatically provided. **WIS. STATS. S. 440.11** **ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.**

WISCONSIN STATUTES AND CODE

Copies of the Wisconsin Statutes and Administrative Code relating to Real Estate Appraisers can be ordered through the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28.